

July 18, 2012

TECHNICAL STAFF REPORT

Petition Accepted on March 16, 2012

Planning Board Meeting of August 2, 2012 (Advisory Authority Rules)

Zoning Board Hearing to be scheduled

Case No./Petitioners: ZB 1100M – Shangri-La Homes, LLC

Location: Second Election District
Northeast side of MD 103 (Montgomery Road) approximately 1,500 feet
southeast of Long Gate Parkway
Tax Map 31, Grid 1, Parcel 579, Lot 4; 4475 Montgomery Road (the
"Property")

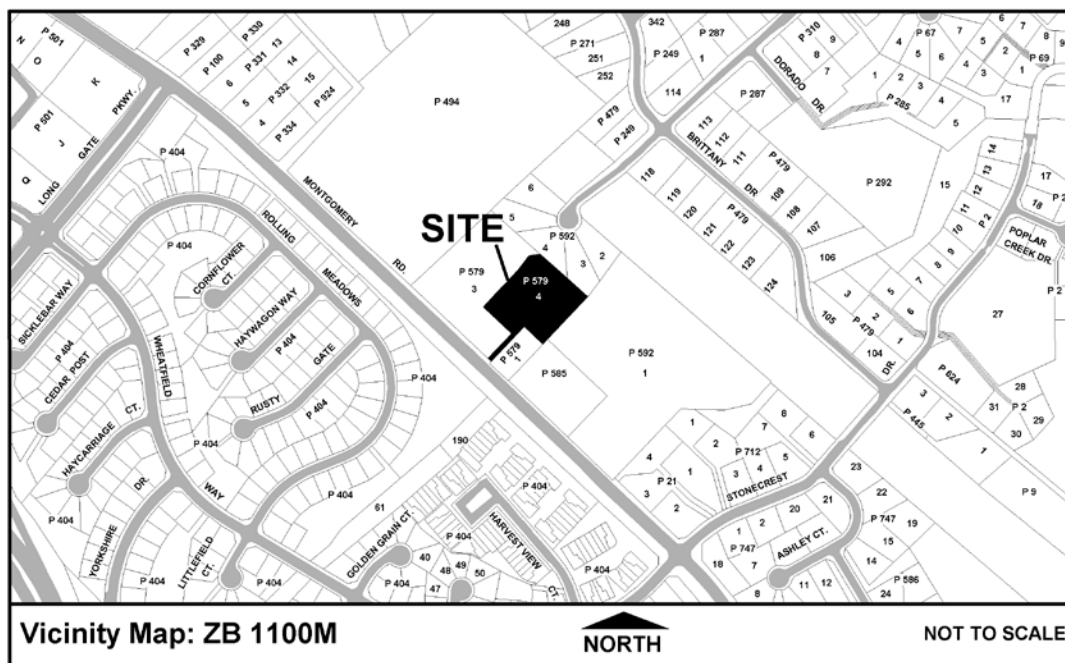
Area of Site: 1.89 acres

Current Zoning of Site: R-20 (Residential: Single)

Proposed Zoning of Site: R-SI (Residential: Senior - Institutional)

Department of Planning and Zoning Recommendation:

APPROVAL



I. DESCRIPTION OF PROPOSAL

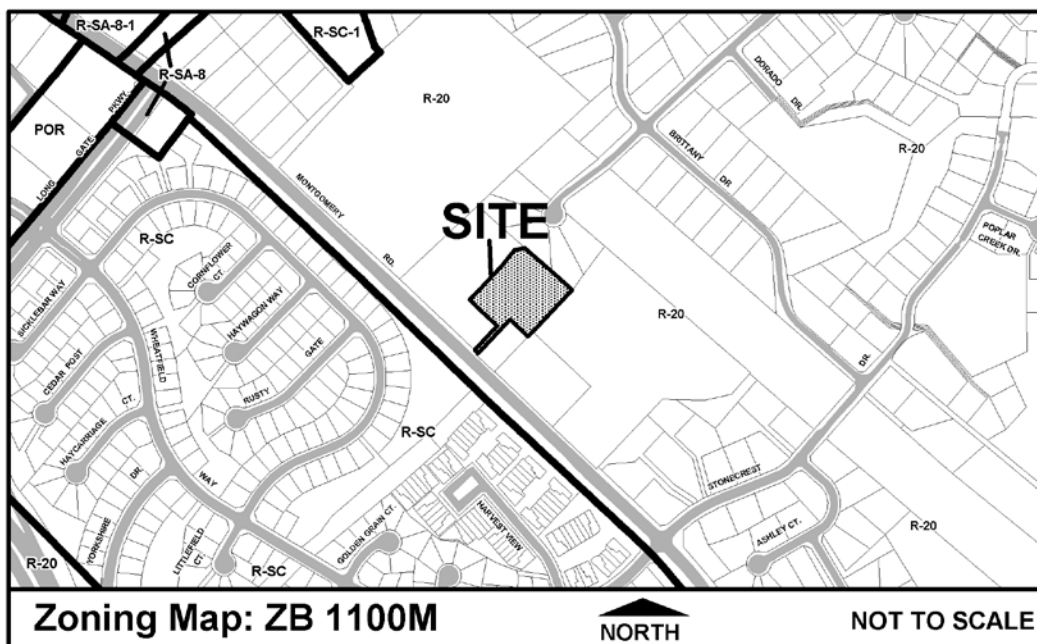
- **The Petitioner requests a Zoning Map Amendment to rezone the Property from the current R-20 (Residential: Single) District to the R-SI (Residential: Senior - Institutional) District with a documented site plan.**

The Property is the site of an existing assisted living facility with 45 beds which was ultimately approved in 1995 as a Special Exception for a Group Care Facility for the Elderly (the "Facility") after a previously approved Special Exception lapsed.

Under the proposed rezoning, the Petitioner requests approval to increase the number of beds within the existing facility from 45 beds to 60 beds which would be permitted as a matter of right in the R-SI District. Five new parking spaces would be added to the site in conjunction with the increased number of beds.

- **The Petitioner alleges that the current R-20 zoning for the Property is a mistake based on an allegation that certain issues were unknown to the County Council in the 2004 Comprehensive Zoning Plan ("CZP"). The Petitioner, in answer to the petition section concerning whether the Property can be used in its present zoning classification, states "Technically no, because residential care facilities of more than 16 beds are not permitted in the R-20 zoning district and the Hearing Examiner recently ruled in BA 11-002N that the existing use did not qualify as a nonconforming use".**

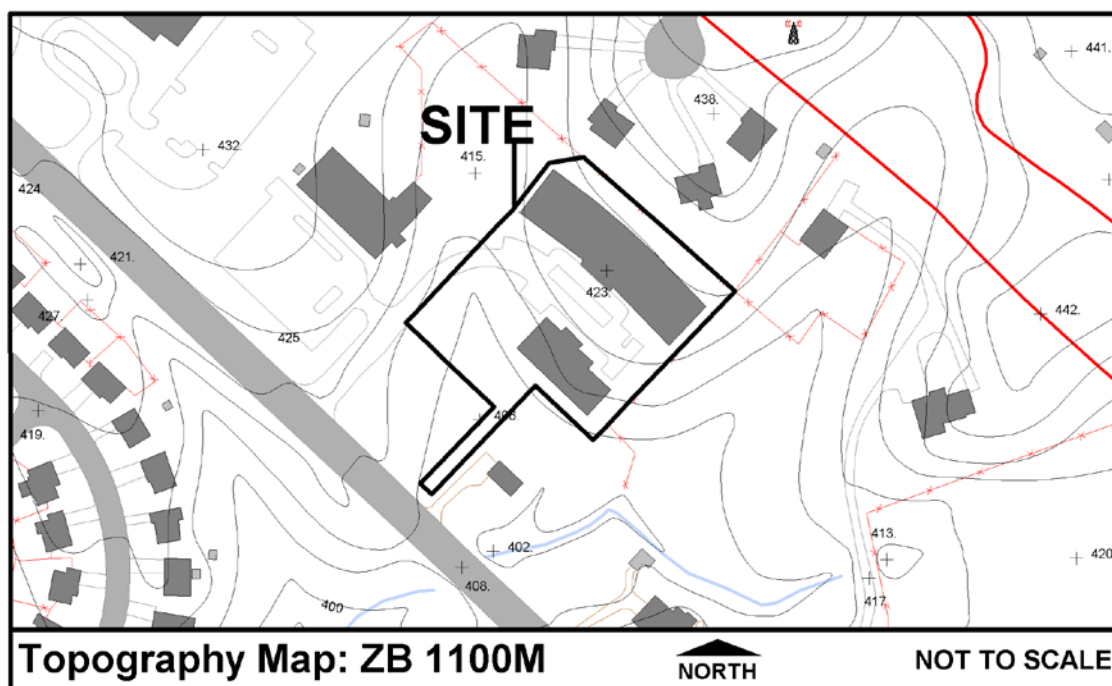
As background and support for the allegation, it is stated that the Property has been zoned R-20 for decades and was initially approved as a Special Exception for a Group Care Facility for the Elderly, the category which preceded the current Nursing Home and Residential Care Facility category.



During the processing of the Site Development Plan for the Facility, Zoning Regulations Amendment ZRA-30 became effective on July 12, 2001. One of the many actions of ZRA-30 was the elimination of the use category that included the group care facility use for which the Facility obtained approval, and generally replacing it with a new Conditional Use category that included residential care facilities (now Section 131.N.37.) that only permits a maximum of 16 beds. During the continued processing of the Site Development Plan, no construction had begun on the site. The Petitioner alleges that during this processing period, nothing was occurring on the Property which would have alerted the County Council that a change in zoning was needed to accommodate the use which was being processed; therefore, the Council mistakenly retained the R-20 zoning in the 2004 Comprehensive Zoning Plan (the “CZP”) which became effective on April 13, 2004. Subsequent to the CZP, the Site Development Plan received approval and the Facility began operation in 2006. It is further stated that whatever assumption the Council made about the Property and its use in 2004 has been shown to be mistaken over time since the construction of the Facility.

- **The request for a Zoning Map Amendment does not include an allegation of substantial change in the character of the neighborhood as a rationale to support the proposed rezoning.**
- **This Zoning Map Amendment request is made under the Section 100.G.2. regulations for cases with site plan documentation with a documented site plan, entitled “Site Plan, Shangri-La, Section One” (the “DSP”).**

The DSP indicates that no new structures are proposed on the Property. Although the required structure and use setbacks in the R-SI District are greater than those in the R-20 District, the existing structures are deemed by the Department of Planning and Zoning to be non-complying structures as approved under SDP 92-091.



- **The DSP indicates that 30 parking spaces are required and 30 spaces will be provided.**

Based on 60 total beds and a requirement of one required parking spaces per two beds, 30 spaces would be required. There are 25 existing spaces on the site and five new spaces are proposed for a total of 30 spaces.

II. BACKGROUND INFORMATION

A. Site Description

The Property is an irregularly shaped pipestem lot. The pipestem portion does not extend along the existing driveway shared with the adjoining Lot 3, but instead extends to the MD 103 frontage along the front portion of the southeast side lot line. The driveway shared with Lot 3 extends into the Property at a point approximately 225 feet from MD 103. From this point, the driveway curves to the northeast and becomes a small parking lot with a central drive aisle and perpendicular parking spaces, most of which are on the north side of the aisle.

There are two buildings; on the north side of the parking lot is the two-story, main assisted-living building, and there is a smaller recreational building on the south side. Behind the main building is a long, narrow patio which appears to not comply with the 20 foot use setback.

The area to the southwest and west of the recreational building is an area of wetlands and wetlands buffers, and this area is generally the lowest elevation on the Property, with the highest points being along the rear lot line. Except for the area behind the main building, there is little landscaping on the Property.

B. Vicinal Properties

- Adjoining the northwest side of the Property is Lot 3 of the Shangri-La development approved with Site Development Plan 92-91 (the "Approved Plan"), Shangrila, a Montessori School, religious facility and elderly housing facility. Under the Approved Plan and pursuant to approved Special Exceptions, the religious facility and Montessori School were approved for operation on Lot 3.
- Adjacent properties on the northeast side of MD 103 are also zoned R-20. The adjoining parcel to the northwest is the site of the Ellicott Mills Middle School. The adjoining parcel to the southeast, Parcel 592, is a single family detached dwelling subdivision, Turkey Farm Place, Lots 1-6. Lot 1 is encumbered with wetlands and associated wooded buffers where it adjoins the Property and is improved by a single family detached dwelling situated toward the rear lot line. Parcel 481, which adjoins the Property's southerly (side) lot line and fronts on MD 103 is the site of a Howard County pumping station.
- Across MD 103 to the southwest, are several R-SC zoned residential developments.

C. Roads

- MD 103 has two northbound travel lanes, one southbound travel, a center turn lane and approximately 44 feet of paving within a variable width right-of-way. The posted speed limit is 45 miles per hour.
- The estimated sight distance from the existing driveway entrance is greater than 500 feet to the southeast and over 500 feet to the northwest. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however.
- According to data from the State Highway Administration, the traffic volume on MD 103 east of Old Columbia Pike was 28,740 ADT (average daily trips) as of 2007.

D. Water and Sewer Service

- The Property is in the Metropolitan District and is within the Existing and Under Construction Service Area of the Howard County Water and Sewerage Master Plan. The site is currently served by public water and sewer facilities.

E. General Plan

- The Property is designated Residential Areas on the Policies Map 2000-2020 of the 2000 General Plan.
- MD 103 is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan.

F. Agency Comments

The following agencies had no objections to the proposal:

1. Department of Fire and Rescue Services
2. Department of Recreation and Parks
3. Bureau of Environmental Health
4. State Highway Administration
5. Department of Inspections, Licenses and Permits

G. Subdivision Review Committee

- The DSP included with this petition was not evaluated by the Subdivision Review Committee. As previously noted in this Technical Staff Report no new structures are proposed on the Property and the existing structures are deemed by the Department of Planning and Zoning to be non-complying structures as approved under SDP 92-091.

H. Adequate Public Facilities Ordinance

- The petition is subject to the Adequate Public Facilities Ordinance. A site development plan for the proposed development is subject to the requirement to pass the test for adequate road facilities.

III. ZONING HISTORY

- Note: The following cases are those generally associated with the history of the Facility and the current Property as Lot 4, and do not include those cases associated with the use(s) on the adjoining Lot 3 to the northwest.
- A. Case No.: BA 11-002N
Petitioner: Pradip Ghosh t/a Shangri-La
Request: Confirmation of a Nonconforming Use for an existing assisted living facility with 45 beds, and enlargement/extension of the alleged Nonconforming Use to add 15 beds within the existing building, and 5 new parking spaces
Action: Denied, April 25, 2011
- B. Case No. BA 07-038C
Petitioner: R. V. International Foundation
Request: Conditional Use for a nonprofit community hall and camp
Action: Denied, March 13, 2008
- C. Case No. BA 96-27E
Petitioner: Pradip Ghosh
Request: Modification to an existing Special Exception to reduce the size of the Special Exception to 63,560 square feet
Action: Granted, November 14, 1996
- D. Case No. BA 94-16E
Petitioner: Pradip Ghosh, Foundation for Human Development t/a R. V. International Foundation
Request: Special Exception for a group care facility for the elderly
Action: Granted, March 7, 1995
- E. Case No. BA 89-051E
Petitioner: Development Planners, Inc.
Request: Special Exception to operate a group care facility for the elderly
Action: Granted, November 30, 1990.

IV. EVALUATIONS AND CONCLUSIONS

A. **Evaluation of the Petition Concerning the Mistake Rule**

- **The Department of Planning and Zoning concurs with the Petitioner that the assumption that the use of the Property for the approved Facility would not be affected by its R-20 zoning or the adoption of ZRA-30 has proven to be incorrect over time.**

There is no evidence that the Council specifically considered the Property's zoning in the CZP. Regardless, there would have been no compelling reason for the Council to have presumed that the existing R-20 zoning was inappropriate and that the Property should have been rezoned since the Facility was an approved Special Exception under the existing R-20 zoning.

This approved Special Exception allowed not only the continued use of the Facility on the Property, but also allowed for the option for a future zoning petition for an expansion to the Facility. With ZRA-30, the Special Exception category under which the Facility was approved was eliminated. The Council would not have necessarily been aware that the Property had been directly affected by the adoption of ZRA-30 in 2001 or anticipated that it would later be determined that the Facility would not qualify as a nonconforming use; otherwise, the Council may have rezoned the Property in the CZP. It is reasonable to conclude that the Council was not aware of this information, and that a mistake was made in not rezoning the Property.

- **In addition, the assumption that the R-20 District is the appropriate zoning for the Property has also proven to be incorrect.**

The Special Exception category under which the Facility was approved has been eliminated and the comparable Conditional Use category limits the number of permitted beds to 16. Given that the Facility is approved for 45 beds, the number of existing beds exceeds the number currently permitted and the Facility does not qualify for a nonconforming use or expansion of a nonconforming use; therefore, the Property's R-20 zoning is not appropriate. The proposed R-SI District is the most appropriate zoning district which would allow the continuance and expansion of the long established use of the Property.

B. Evaluation of the Petition Concerning the Change Rule

- **There is no defined neighborhood as there is no allegation of change in the character of the neighborhood.**

C. Relation to the General Plan

- **The Property is ill-suited for R-20 zoning and is already developed with a Group Care Facility for the Elderly. For these reasons, the petition is in harmony with Balanced and Phased Growth Policy 4.3 to "Ensure an adequate housing supply for the elderly..." and will provide additional senior housing offering various levels of support.**

D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.

1. The existing development scenario depicted on the DSP has existed for approximately five years and no additional buildings are proposed. The DSP is considered to be compatible with the existing and potential land uses of the surrounding areas which include residential and institutional uses.
2. The existing development has been approved with the noted SDP.
3. The existing development on the DSP has access points that have been approved and determined to be safe by the State Highway Administration.
4. As noted above, the DSP would be considered as reasonably compatible with the Howard County General Plan.

V. RECOMMENDATION

APPROVAL

For the reasons noted above, the Department of Planning and Zoning recommends that the requested Zoning Map Amendment with site plan documentation to rezone the Property from R-20 to R-SI be **APPROVED**.

 7/18/12
Marsha McLaughlin, Director Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

MM/ZLK/zlk